

# **The Civil Rights of Institutionalized Persons Act: Has It Fulfilled Its Promise?**



**National Council on Disability  
August 8, 2005**

National Council on Disability  
1331 F Street, NW, Suite 850  
Washington, DC 20004

**The Civil Rights of Institutionalized Persons Act: Has It Fulfilled Its Promise?**

This report is also available in alternative formats and on the award-winning National Council on Disability (NCD) Web site ([www.ncd.gov](http://www.ncd.gov)).

Publication date: August 8, 2005

202-272-2004 Voice  
202-272-2074 TTY  
202-272-2022 Fax

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# National Council on Disability

*An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.*

August 8, 2005

The President  
The White House  
Washington, DC 20500

Dear Mr. President:

On behalf of the National Council on Disability (NCD), I am submitting a report entitled *The Civil Rights of Institutionalized Persons Act: Has It Fulfilled Its Promise?* This report is one of a series of independent analyses by NCD of federal enforcement of civil rights laws.

The impetus of this series was the 1996 national disability policy summit, in which more than 300 disability community leaders from diverse backgrounds participated. Summit participants asked NCD to work with federal agencies to develop strategies for improving enforcement of federal laws that protect the rights of people with disabilities.

This report examines the U.S. Department of Justice's (DOJ) enforcement of the Civil Rights of Institutionalized Persons Act (CRIPA), which was enacted by Congress in 1980 to protect the rights of people in state-run nursing homes, mental health facilities, institutions for people with intellectual and developmental disabilities, and correctional facilities for children and adults. NCD's findings reveal that the DOJ has enforced the statute unevenly—performing well in some areas but poorly in others.

This report provides recommendations for ways the DOJ could better protect the rights of people in institutions, including adopting strategic and multifaceted enforcement, broadening the breadth of investigations, resolving cases through enforceable consent decrees, increasing technical assistance to states to help them comply with federal laws, increasing federal agency coordination to support human and civil rights, making better use of the press, and including more and consistent data in its annual reports to Congress.

NCD stands ready to work with federal agencies, state governments, the disability community, and other stakeholders to improve federal protection of the rights of people in institutions. We look forward to the day when the civil rights all people—whether they reside in institutions or have transitioned to the community—are respected throughout our nation and CRIPA becomes a footnote in scholarly articles as a law enacted to combat institutional conditions that no longer exist.

Sincerely,

Lex Frieden  
Chairperson

(The same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the U.S. House of Representatives.)



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## **Acknowledgments**

This report is the product of a team effort and incorporates the work of several people. The preliminary research, interviews, and document acquisition were conducted through a contract with Tony Records and Associates, assisted by Bob Williams and Ruthie Beckwith. Because of the unevenness of data and record systems regarding the implementation of the Civil Rights of Institutionalized Persons Act (CRIPA), it was necessary to scale back the scope of the work to produce a snapshot view instead.

Michele Magar and Bonnie Milstein assisted the National Council on Disability (NCD) in refining the preliminary research results and findings to produce a draft report. Elizabeth Akinola assisted with the data review and analysis.

NCD would like to thank numerous CRIPA stakeholders, including leaders in areas of research, law, and education, along with people with disabilities and others with expertise in consumer self-directed advocacy, who gave their time during the development of this report. Our appreciation is also extended to the staff of the Civil Rights Division, Special Litigation Section of the Department of Justice. These federal agency personnel answered many questions, gathered documents, and shared data with the research team. In addition, they reviewed preliminary drafts of this document for technical accuracy.

# Table of Contents

Executive Summary .....	7
Recommendations .....	8
Introduction .....	11
Chapter 1. CRIPA: Legislative History and Legal Developments .....	13
Setting the Stage: The Enactment of CRIPA .....	13
Legal Developments Since the Enactment of CRIPA .....	14
Chapter 2. How the Department of Justice Enforces CRIPA .....	15
Complaints .....	15
Investigations .....	17
Letters of Findings .....	20
Conciliation .....	21
Lawsuits .....	25
Overarching Enforcement Issues .....	30
Public Education and Outreach .....	31
Web Site .....	31
Media .....	32
Reports to Congress .....	33
Conclusion .....	37
Appendix I. The Civil Rights of Institutionalized Persons Act .....	39
Appendix II. Data from the Department of Justice’s Annual Reports to Congress, Letters of Investigative Findings, Complaints, Briefs, Settlements, and Court Decisions .....	49
Enforcement Timelines .....	49
Appendix III. Department of Justice Staffing and Budget Allocations for CRIPA (1995–2003) .....	63
Appendix IV. Mission of the National Council on Disability .....	65
Overview and Purpose .....	65
Specific Duties .....	65
International .....	66
Consumers Served and Current Activities .....	66
Statutory History .....	66
Endnotes .....	67



*One measure of a nation's civilization is the quality of treatment it provides persons entrusted to its care.<sup>1</sup>*

## **Executive Summary**

Congress enacted the Civil Rights of Institutionalized Persons Act<sup>2</sup> (CRIPA) in 1980 to enable the Department of Justice (DOJ) to protect the rights of people residing in state institutions. The law authorizes the Attorney General to initiate or intervene in lawsuits in federal court to vindicate the rights of people in state-run or locally operated jails and prisons, juvenile correctional facilities, public nursing homes, mental health facilities, and institutions for people with intellectual disabilities.

Twenty-five years later, CRIPA remains critically important. The isolated nature of institutions and the vulnerability of their residents combine to create environments ripe for abuse. One and a half million Americans reside in 17,000 nursing homes, and 30 percent of those facilities have been cited for harming residents or placing them at risk of serious injury or death.<sup>3</sup>

The actual incidence of abuse is far higher. Studies suggest that 80 percent to 85 percent of abuse in institutions goes unreported.<sup>4</sup> Abuse typically occurs behind closed doors. Residents and family members are often reluctant to report abuse for fear of reprisal. In some cases, disabilities may interfere with residents' ability to ask for help or may lead caregivers to dismiss what residents say.

This report examines how DOJ has used its congressional mandate. DOJ's enforcement of CRIPA has been excellent in some respects and lacking in others. DOJ's investigations of complaints are thorough and effective, and its letters of findings accurately reflect the results of its investigations and provide information about how states can remedy constitutional and statutory violations. CRIPA requires DOJ to attempt to persuade states to voluntarily comply with the law before initiating lawsuits, but DOJ has been too reticent to use its authority to litigate, preferring to focus too much time and energy on conciliation as a means of achieving compliance. When DOJ does litigate, it does so skillfully; however, it undermines its advocacy by resolving some cases through private agreements rather than enforceable consent decrees.

## Recommendations

This report suggests ways to improve DOJ's CRIPA enforcement. A summary of the recommendations follows:

- 1. Strategic Enforcement.** DOJ should convene periodic meetings with experts, including people with disabilities, on the rights of people in institutions, to develop a list of the most egregious and widespread violations that exist in each type of institution covered under CRIPA. These experts should further assist DOJ staff by recommending which violations are most amenable to redress under the law, considering recent court decisions and the leanings of federal judges. To address these issues, DOJ should prioritize complaints for investigation.
- 2. Breadth of Investigations.** DOJ should broaden the scope of its investigations beyond specific complaint allegations to include overarching concerns, such as whether people with disabilities are being institutionalized in health care facilities or segregated within correctional facilities in violation of the Americans with Disabilities Act of 1990 (ADA) and the Supreme Court's *Olmstead* decision. Moreover, DOJ's investigations should include interviews with family members and local advocacy organizations.
- 3. Speed of Enforcement.** DOJ should create internal deadlines to reduce the time it takes to move from complaint to investigation to letters of findings.
- 4. Litigation.** DOJ should end its practice of filing simultaneous complaints and consent decrees. Instead, Department staff should file complaints promptly and use temporary restraining orders, preliminary injunctions, and other enforcement tools available while litigation is pending to protect vulnerable populations and correct dangerous conditions as quickly as possible while the case progresses toward eventual resolution. Moreover, DOJ should revert to its earlier practice of resolving cases through enforceable consent decrees and end its growing reliance on private agreements. Finally, Department staff should err on the side of being more, rather than less, prescriptive in case settlements. Department staff should insist on specific outcomes rather than more general policies and procedures to remedy violations and guard against regression when monitoring ends.

5. **Multifaceted Enforcement.** DOJ should use a multifaceted approach to enforcement or, alternatively, should invite local civil rights organizations that have contacts with local reporters, community-based organizations, and elected officials to co-counsel cases and broaden the type of advocacy used to remedy CRIPA violations. In particular, DOJ should make better use of local protection and advocacy agencies charged with investigating abuse and neglect in institutions, and other nonprofit advocacy organizations with well-established records of protecting the rights of people in institutions. DOJ should find ways to enhance the number of CRIPA-specific state and local contacts to improve information dissemination. The primary role for CRIPA-specific contacts would be to raise public awareness across the country with respect to CRIPA rights and protections.
6. **Improved Technical Assistance to States.** DOJ should improve its technical assistance to states by including experts from other federal agencies in a team approach to help states achieve compliance with constitutional and statutory protections for people in institutions. During meetings and in communications to impart such technical assistance, DOJ should ensure that local advocacy groups and stakeholders, such as families, are present. Assistance should be provided in ways that are sensitive to and appropriate for people from diverse cultural backgrounds.
7. **Federal Agency Coordination.** DOJ should regularly solicit input from other federal agencies to help it uncover conditions ripe for enforcement actions under CRIPA. In turn, it should inform other federal agencies of evidence of illegal practices and conditions in institutions overseen by federal regulators. This mutual exchange of information should be institutionalized via the creation of Memoranda of Understanding with relevant federal agencies. While a mandated level of collaboration has begun with the Department of Health and Human Services (HHS), Congress should ensure that DOJ also coordinates its enforcement with that of other federal agencies and seeks ways to increase its HHS collaboration. For example, it should report institutions to HSS that are in breach of Medicaid conditions of participation. In turn, HSS is authorized to withhold Medicaid funding if violations are not remedied within 24 to 48 hours.

- 8. Web Site Improvements.** DOJ should publish all, rather than a representative sample, of its letters of findings, complaints, and court decisions on its CRIPA Web site. It should also publish a list of institutions under investigation. DOJ should increase its assistance to persons who face emergency situations by including a brief description of protection and advocacy agencies, along with the Web site for the agencies' umbrella organization, the National Association of Protection and Advocacy Systems, Inc., which provides contact information for protection and advocacy organizations throughout the country.
- 9. Strategic Use of the Media.** DOJ should increase its use of the media to educate the public about the rights of people in institutions and the Federal Government's role in protecting those rights by publicizing its investigations, findings, and victories on behalf of people who reside in institutions.
- 10. More Thorough Reports to Congress.** DOJ should improve its CRIPA enforcement reports to Congress by including the full range of data required under the statute. In turn, Congress should increase its oversight of DOJ's enforcement of CRIPA and ensure that DOJ has sufficient funding and other support to do its work.

## Introduction

In 1980, Congress enacted the Civil Rights of Institutionalized Persons Act (CRIPA) to authorize the Department of Justice (DOJ) to use litigation to enforce the rights of people residing in state or local institutions. The law enabled DOJ to initiate or intervene in pending lawsuits to correct egregious and systemic violations of the rights of people in public nursing homes, jails and prisons, juvenile justice facilities, and institutions that house people with psychiatric or intellectual and developmental disabilities. DOJ is not authorized to represent individuals—it may only bring cases in response to a pattern or practice of violations.

Protection of the nation’s most vulnerable individuals continues to be a vital DOJ responsibility. As this report was going to press, the *New Orleans Times-Picayune* reported that at least 33 residents in Louisiana nursing homes had died from abuse or neglect since 1999.<sup>5</sup> In the past six years, the majority of the state’s nursing homes have been cited for harming or endangering residents. In one particularly harrowing incident, red ants had eaten away the top layer of skin over much of one resident’s body before she was finally taken to a hospital for treatment.

With the state imposing average fines of \$1,970 for causing or contributing to the deaths of nursing home residents, the institutions have little incentive to improve their practices. Although federally funded protection and advocacy agencies have jurisdiction to investigate abuse and neglect at institutions that house people with disabilities, they are underfunded and most battle state agencies that are reluctant to disclose information about incidents of abuse and neglect.<sup>6</sup>

This report reviews the quality of DOJ’s enforcement of CRIPA. It describes each step in the law’s enforcement and recommends ways DOJ might improve its work at each stage of the process. The text of the statute is included in Appendix I. Appendixes II and III contain charts that reflect data drawn from DOJ’s annual reports to Congress, which describe its CRIPA enforcement activities, as well as letters of investigative findings, complaints, briefs, settlements, and court decisions. Throughout this report, the terms “Department of Justice,” “DOJ,” “Justice Department,” and “the Section” (that is, the Special Litigation Section) are used interchangeably.

More than a dozen people generously shared their knowledge of DOJ's CRIPA enforcement with the authors of this report. Some did so with the promise of anonymity and are referred to in the pages that follow as "observers." The National Council on Disability (NCD) recognizes and commends DOJ staff for their cooperation and attention to detail, and for the volumes of information they provided during the development of this report.

Although the authors of this report originally hoped to include measurable indicators of the quality of DOJ's enforcement of CRIPA, this was impossible because of unavailable or incomplete data on such factors as when notices of intent to investigate were issued, dates investigations were initiated, and the outcomes of cases, as well as internal factors such as the budget and staffing devoted to CRIPA enforcement. DOJ's annual reports to Congress and other data offered by DOJ did not contain information that permitted comparison over the 25 years of CRIPA enforcement. To the extent that longitudinal tracking was possible, it is contained in Appendixes II and III. This report relies on interviews with current and past CRIPA staff, as well as attorneys and experts who have worked with DOJ on CRIPA cases.

NCD encourages broad dissemination of this report to encourage discussions and prompt ideas about how the Federal Government can improve its work to protect the rights of people in institutions throughout the nation. Interested readers may wish to read related NCD reports on the impact of the Supreme Court's *Olmstead* decision, livable communities for all people, consumer-directed health care, and similar topics. These reports appear on NCD's Web site ([www.ncd.gov](http://www.ncd.gov)).

# Chapter 1. CRIPA: Legislative History and Legal Developments

## Setting the Stage: The Enactment of CRIPA

DOJ began working to protect the rights of people who reside in institutions before Congress enacted CRIPA.<sup>7</sup> In fact, DOJ was viewed by many as a leader in this area and in the field of disability rights in general. DOJ participated in these cases as a litigating amicus curiae or as a plaintiff intervenor.

When DOJ tried to initiate its own institutional reform cases, it encountered resistance from judges who ruled that DOJ lacked the authority to bring such cases.<sup>8</sup> In response, DOJ and its supporters asked Congress to enact a statute to give DOJ standing to bring its own cases to protect the rights of people in institutions. Congress agreed that DOJ should be empowered to continue its important work, as indicated in the Judiciary Committee report that accompanied the bill that became CRIPA.

The resources and skill which the Attorney General brings to such litigation cannot be matched by private counsel. The Justice Department's access to the investigative resources of the FBI, the technical advice of other Federal agencies, and the professional assistance of nationally recognized experts in the field of institutional care enable it to develop a comprehensive record for adjudicating courts. The experience and expertise of Justice Department attorneys guarantees that litigation will be handled professionally, with a minimal expenditure of judicial time and resources. The presence of the Attorney General lends credibility to the proceedings and alerts courts, litigants and the public to the seriousness of the charges. Finally, DOJ provides the stability and continuity necessary to see litigation to its conclusion and to monitor implementation of court decrees.<sup>9</sup>

As the Judiciary Committee report made clear, Congress gave DOJ the ability to use litigation to force recalcitrant states to respect the rights of people in institutions.

Neither the Attorney General nor the committee suggest that litigation by the Justice Department is an ideal method for eradicating widespread institutional abuse. It is costly, time-consuming and disruptive of the operation of State and local governments. Experience has shown, however, that it is also the single most effective method for redressing systematic deprivations of institutionalized persons' constitutional and Federal statutory rights. Until such time as every State and political subdivision assumes full

responsibility for protecting the fundamental rights of institutionalized citizens, the need for Federal enforcement of those rights will continue.<sup>10</sup>

## **Legal Developments Since the Enactment of CRIPA**

Since the enactment of CRIPA, new laws and court decisions have had a dramatic impact on the rights of people in institutions. The most important of these are the ADA,<sup>11</sup> the Prison Litigation Reform Act of 1995,<sup>12</sup> and the Supreme Court's decision in *Olmstead v. L.C.*<sup>13</sup> in 1999.

The ADA was enacted by Congress to build on and broaden the rights of people with disabilities guaranteed under Section 504 of the Rehabilitation Act of 1973,<sup>14</sup> which bars discrimination on the basis of disability by recipients of federal funds. Title II of the ADA prohibits discrimination on the basis of disability by state and local governments, and their contractors, in cases in which Section 504 does not apply. Because CRIPA covers institutions owned or operated by states or their political subdivisions, the ADA has had a direct impact on DOJ's work on behalf of people in institutions.

On June 22, 1999, the Supreme Court ruled that unjustified institutionalization of people with disabilities was a per se violation of the ADA. The Court's landmark *Olmstead* decision was the result of a lawsuit brought on behalf of two women who remained institutionalized in Georgia after the state hospital's doctors had decided that the women were ready to live in the community. The decision was an affirmation of the ADA's integration mandate and has been used across the nation by DOJ and others to challenge unnecessary institutionalization. The practical import of the *Olmstead* decision is that DOJ can investigate not only the conditions present in institutions but, more important, whether residents should be housed in an institution rather than in the community.

In 1995, in response to complaints that prisoners and their advocates were clogging the courts with frivolous lawsuits, the Prison Reform Litigation Act was enacted by Congress. The law severely limits the ability of prisoners to vindicate their rights by, among other things, limiting attorneys' fees available to lawyers who bring successful prisoners' rights suits. As a result, the number of private attorneys willing to represent prisoners has dwindled—making DOJ's CRIPA enforcement on behalf of incarcerated persons more important than ever.

## **Chapter 2. How the Department of Justice Enforces CRIPA**

### **Complaints**

DOJ receives thousands of complaints every year about violations of the rights of people in institutions. DOJ is alerted to such problems in a variety of ways, including letters and phone calls from individuals, advocacy groups, and elected officials; news reports; and referrals from other divisions of DOJ, other federal agencies, and the White House.

There appear to be no internal deadlines by which complaints must be addressed, and it is not unusual for the Special Litigation Section to take weeks or even months to respond to a complaint. The statute allows DOJ to take action in response to “egregious or flagrant conditions” pursuant to a pattern or practice of violations of constitutional or federal statutory rights.<sup>15</sup> The “pattern or practice” requirement means that the Section cannot respond to requests to address conditions, however egregious, that affect only one individual. However, the Section’s Web site states that it collects information about specific incidents so that staff can determine whether a pattern or practice of violations exists.<sup>16</sup>

One frustration voiced by observers is that DOJ does not appear to use internal guidelines, other than those imposed under CRIPA, to decide which complaints merit investigation. Some advocates try for months to get DOJ’s attention, while a call from an elected official often prompts an immediate response.

In response to a draft version of this report, a Department spokesperson wrote that DOJ does set internal deadlines and criteria for CRIPA enforcement. These are—

based upon a variety of factors, including, among others, the seriousness of the issues developed in the preliminary inquiry and during the investigation, the number of victims, pertinent statutory and case law, office resources, approach and response of the jurisdiction operating the institution, as well as consultant availability and responsiveness.

The spokesperson also indicated that CRIPA enforcement staff welcome information from advocates and respond promptly to advocates’ calls and letters.

Some observers believe that, rather than selecting the most egregious or well-placed complaints to act on, DOJ should instead engage in strategic enforcement and investigate complaints that allow it to address and stem emerging problems nationwide. By focusing on widespread problems—such as the inappropriate placement of children and adults with psychiatric disabilities in correctional institutions or the lack of special education services in juvenile justice facilities—DOJ could leverage its enforcement capacity by signaling institutions across the nation to remedy targeted issues lest they be the next focus for CRIPA enforcement.

***Recommendation:* The Special Litigation Section should convene periodic meetings with experts, including people with disabilities, on the rights of people in institutions to develop a list of the most egregious and widespread violations that exist in each type of institution covered under CRIPA. The experts should further assist Section staff by recommending which violations are most amenable to redress under the law, taking into account recent court decisions and the leanings of federal judges. The Section should then prioritize complaints for investigation to address these issues.**

DOJ has already embraced the concept of enforcement prioritization. In a report to the President on DOJ's efforts to help the nation's institutions comply with *Olmstead*, DOJ states that it will find ways to coordinate its efforts with other federal agencies.

To identify those institutions where the greatest number of qualified individuals are unnecessarily institutionalized, exploring a DOJ database that analyzes the utilization reviews from institutions and ranks those with the highest percentage of reviews that show that individuals do not need the level of care the institution provides.<sup>17</sup>

Coordination among federal agencies would be welcomed by those who are frustrated at uneven federal enforcement of disability rights. "Health and Human Services and the Justice Department don't work together," says one observer. "In fact, it's often the case that a facility has an okay from HHS [which continues to fund the facility] while serious findings of violations are issued by the Department of Justice."

After reviewing a draft of this report, a Department spokesperson wrote that DOJ staff regularly solicit input from other federal agencies to learn about conditions that may violate constitutional

or federal statutory rights of people in institutions. As an example, the spokesperson wrote that DOJ staff routinely contact regional offices of the Centers for Medicare and Medicaid Services (CMS) to ask about conditions in government-run health care facilities.

The ongoing collaboration to combat health care fraud and abuse in Medicare and other CMS programs within HHS is mandated by Congress. However, DOJ could increase its effectiveness by coordinating its CRIPA efforts with HHS and other federal agencies. Institutions with CRIPA violations are often also in breach of Medicaid conditions of participation. When life-threatening conditions are present, regulators can cite institutions and demand remedies within 24 to 48 hours. Institutions that do not respond risk the loss of Medicaid funding—a risk few states are willing to take.

***Recommendation:* DOJ should explore these and other methods of leveraging its ability to protect the rights of people in institutions through coordination with other government agencies. Congress should ensure that the necessary resources are provided to DOJ for an overall strategy to improve interagency coordination efforts and outcomes for people with disabilities.**

***Recommendation:* DOJ should institutionalize its practice of regularly soliciting input from other federal agencies to help it uncover conditions ripe for enforcement actions under CRIPA by developing Memoranda of Understanding (MOUs) with relevant federal agencies. The MOUs should obligate federal agencies to alert CRIPA staff of suspicious conditions as soon as such information becomes available. This would enable timely receipt of information by CRIPA staff and would ensure that prompt information sharing continues with new Administrations. The MOUs should require information to flow in both directions by obligating CRIPA staff to inform other federal agencies of evidence of illegal practices and conditions in institutions overseen by federal regulators.<sup>18</sup>**

## **Investigations**

Before commencing a CRIPA investigation, the Attorney General must give seven days' written notice to the governor, state attorney general, and director of the institution.<sup>19</sup> The Section hires

experts to conduct the investigation after it sends out the seven-day-notice letter. Investigations typically include onsite tours of facilities, interviews with staff and residents, and review of medical records and other documents.

However, not all institutions that receive seven-day-notice letters opt to cooperate with DOJ's investigation. Some directors of institutions have refused to allow Section staff and experts access to their facilities. Arthur Peabody, an attorney who worked at DOJ enforcing the rights of people in institutions from 1972 until 1996, explains how the Section responded when it was denied access to facilities. "We engaged in careful negotiation and discussion. It was understood that if there was no cooperation, we would sue. It was a carrot-and-stick approach, and we almost always got access."

A DOJ spokesperson elaborates, "We can draw negative inferences from noncooperation. We make clear to the institution that this is happening." Over the years, DOJ has developed a response when institutions refuse to allow investigators on site:

If we can verify violations [without gaining access], we issue a findings letter, and then we start to negotiate on the issues we found. If we still encounter resistance, we'll file a complaint. We'd never sign an agreement without access to an institution, and once we gain access we can always issue a second findings letter.

According to DOJ, jurisdictions know they risk a complaint if they refuse to cooperate with Section investigations. "They all know—it gets around."

The Section enjoys high praise for the quality and thoroughness of its investigations. It hires nationally recognized experts to assist its staff and typically shares its experts' reports with the director of the institution under review. "They do great investigations and hire highly competent experts," says Mark Soler, president of the Youth Law Center and an attorney who has brought lawsuits challenging conditions in juvenile justice institutions for more than 25 years. Another person familiar with the Section's work is equally enthusiastic. "Their investigations are solid; they search for the best expert witnesses."

Steven Schwartz, executive director of the Center for Public Representation in Massachusetts, has litigated class action suits challenging conditions of institutional confinement for more than 30 years. Schwartz agrees that the quality of the Section's investigations is high. He believes, however, that the Section misses evidence of constitutional and statutory violations by limiting the scope of its investigations.

The framework for settlement is shaped almost entirely by the framework of the investigation. The investigation is shaped by the type of expert conducting it. For example, if you're looking at the use of medications, you've got to have a psychiatrist on the team. When I get a complaint of abuse, I go in and look at everything. They go in and look at abuse. Yet abuse relates to staffing, treatment programs, budget, etc.

But a DOJ spokesperson counters,

DOJ isn't authorized to go on fishing expeditions. Our authority comes from the Attorney General, who wants to know what we're looking for. So we go in looking for what was described in the complaint we received, but we don't turn a blind eye to evidence of violations [not cited by the complainant].

David Utter directs the Juvenile Justice Project of Louisiana and co-counseled a case with DOJ attorneys that was filed in 1998 and challenged conditions at four state institutions for juveniles. He raises another concern regarding the Section's investigations:

They did a great investigation, but they didn't talk with the parents. Parents are an important source of information. If they had been interviewed, DOJ would have discovered that many of the parents agreed to their children's' incarceration because their kids needed treatment, and there were no community programs available to provide it.

Schwartz, Soler, and Utter also complain that Section staff and experts typically failed to consult local advocates, such as protection and advocacy agencies, when investigating conditions at institutions.

In response to a draft version of this report, a DOJ spokesperson wrote that Department staff "routinely interview all stakeholders, including family members and advocacy organizations." However, people outside DOJ who are familiar with CRIPA investigations and who were also interviewed for this report disagree.

***Recommendation:* The quality of the Section’s investigation is excellent. However, the Section should broaden the scope of investigations and include interviews with local family members and advocacy organizations. Additional sources of information will help DOJ collect evidence that can transform individual incidents into pattern and practice cases, and that will also help DOJ uncover violations that it may otherwise overlook.**

## **Letters of Findings**

After receiving reports from its expert consultants, Section staff prepare letters to governors and institution directors that contain the investigation’s findings, the facts supporting them, and the minimal remedial measures needed to address constitutional and statutory violations.<sup>20</sup> The letters also provide statutory notice<sup>21</sup> that, absent successful conciliation, DOJ may bring a lawsuit to enforce the rights of residents in institutions after 49 days have elapsed.

During the early years of CRIPA enforcement, letters of findings were not made public. “We were told the letter was not a public document. I always wondered who we were protecting,” says Bob Dinerstein. Now an associate dean and law professor at American University’s Washington College of Law, Dinerstein worked at DOJ from 1977 to 1982, enforcing the rights of people in institutions.

***Recommendation:* Today, DOJ publishes some of its findings letters on its CRIPA Web site. The letters publicize DOJ’s investigations, allow readers to contribute evidence DOJ may have missed, and add accountability to the enforcement process. DOJ should maximize these benefits by routinely publishing all its letters of findings on its Web site.**

Observers find DOJ’s letters of findings to be thorough and to accurately reflect the results of its investigations. The only consistent complaint is the length of time it takes for the letters to be issued—a complaint that began near the start of DOJ’s CRIPA enforcement and has continued since. A report on conditions at institutions for people with mental disabilities written in 1985 by the staff of what was then called the Senate Subcommittee on the Handicapped notes the following:

[T]he Department’s notice to the states as to findings have been sent up to 27 months after investigations are initiated. Such a lack of timeliness regarding matters determined to be egregious and flagrant abuses of the institutionalized [people with intellectual disabilities] potentially allows these conditions to fester, distorting the purpose of congressionally mandated intervention by DOJ.<sup>22</sup>

Although DOJ has reduced the time it takes to issue letters of findings, many observers continue to complain that DOJ’s pace undermines its mission to protect the rights of people in institutions. “It creates problems with staleness of information and staff and administration turnovers,” says Soler.

“If you look at the date the experts go in [to begin investigating a facility] versus the date the letter of findings goes out, it’s at least six to nine months,” says Schwartz. “Sometimes a year goes by from the time the experts submit their reports to when Section staff issue a findings letter.” Schwartz and other observers believe that timeliness is a critical issue, because delays place vulnerable people at risk. “From the time they decide to investigate, people are getting hurt.”

***Recommendation: DOJ should create internal deadlines to reduce the time it takes to move from complaint to investigation to letters of findings.***

## **Conciliation**

After issuing its letter of findings, DOJ must attempt to bring institutions into voluntary compliance with the law before resorting to litigation.<sup>23</sup> The statute requires DOJ to offer “financial, technical, or other assistance which may be available from the United States and which the Attorney General believes may assist” in correcting practices and conditions which violate the law.<sup>24</sup>

Some observers believe DOJ should share more information with states about federal funding sources that could be tapped to relieve conditions in institutions. For example, federal foster care programs without spending caps allow states to use federal funds to develop placement plans to move children from institutions to community-based programs. Most states do not take full advantage of this funding source, according to Soler, in part because they do not know it exists.

DOJ has pledged to provide more technical assistance to states to help them comply with the Supreme Court's holding in *Olmstead* that unnecessary segregation of people with disabilities is a per se violation of the ADA. In its *Olmstead* report to the President, DOJ promises to coordinate with CMS and the Department of Housing and Urban Development (HUD) to—

take advantage of Federal money available for the costs of housing in the community. DOJ will work with HUD to explore ways in which HUD representatives could be included in institutional meetings at which the transition of an individual from an institution to a community is discussed, so that HUD representatives can counsel individuals regarding housing options and assist with obtaining vouchers.<sup>25</sup>

DOJ's *Olmstead* report states that Department staff already provide the type of detailed technical assistance recommended by Soler to help institutions avoid unnecessary segregation of people with disabilities. The report states that DOJ has helped identify individuals who can be better served in community settings and that it “then works with jurisdictions to identify required residences, day programs, vocational opportunities, specialized services, medical care, and related services and other reports needed to serve individuals in the community.”<sup>26</sup>

***Recommendation:* In the breadth of its work under CRIPA, DOJ should expand its current practice of providing detailed technical assistance to states on ways to comply with *Olmstead*. It should maximize federal technical assistance to states by including experts from other federal agencies in a team approach to helping states achieve compliance with constitutional and statutory protections for people in institutions. During meetings and in communications to impart such technical assistance, DOJ should ensure that local advocacy groups and stakeholders such as families are present. This will maximize the chances that the rights at issue will be protected and will add accountability to the process by empowering local groups and interested people with the knowledge they need to ensure that DOJ's work will continue to be effective long after the Section's case is closed.**

As with other aspects of CRIPA enforcement, some observers believe that DOJ spends too much time engaged in conciliation, to the detriment of people it is charged to protect. “Once the findings letter is sent, a long negotiation begins,” says Dinerstein. “The state may make some

cosmetic changes. Soon the facts have changed or aged, and that makes enforcement more difficult.”

The emphasis placed on conciliation has also worried some observers, who say that over-reliance on obtaining voluntary compliance undermines DOJ’s capacity to fully enforce the law. “Conciliation works only if the other side believes litigation will follow,” says Dinerstein.

DOJ’s reluctance to litigate was a hallmark of its work to enforce CRIPA in the years immediately following enactment of the statute. At that time, CRIPA enforcement was under the direction of William Bradford Reynolds, the first assistant attorney general for civil rights to enforce the statute. During oversight hearings before the Senate Subcommittee on the Handicapped in 1983, one former staff attorney testified about Reynolds’ approach to CRIPA enforcement. “As a result of Reynolds’ policy of conciliation, not a single enforceable agreement to eliminate civil rights violations has been negotiated with any mental retardation institution anywhere in the country.”<sup>27</sup>

Under Reynolds’ leadership, DOJ not only minimized its use of the courts to enforce CRIPA, it also reversed course on its position in lawsuits that were pending when CRIPA was enacted. Steve Whinston, a former Special Litigation Section attorney, testified that—

For ten years, the Justice Department argued to courts that [people with intellectual disabilities living in institutions] had a constitutional right to be placed in settings which are least restrictive of their personal liberty. Thus, institution residents should, wherever possible, be moved to more normalized noninstitutional environments where they will be more able to receive the training needed to achieve meaningful habilitative objectives. Suddenly, under Mr. Reynolds, this was no longer considered to be [a] constitutional right. Instead for the first time, institutions were acceptable for large numbers of persons. The whole orientation of the Justice Department’s litigation in this field has changed from enforcing the rights of the handicapped to establishing what are the limits of a state’s obligations to [people with disabilities]. The first question I was often asked under this Administration was, “What can we do to support the defendants on this issue?”<sup>28</sup>

DOJ’s deference to states, although less pronounced, continued after Reynolds’ departure. “Department of Justice staff wanted us to sue so it would embarrass the front office and allow them to do something,” says Utter, whose case challenging conditions in Louisiana’s juvenile

justice facilities in 1998 was consolidated with a CRIPA enforcement action brought by DOJ five months later.

Not everyone agrees that DOJ over-relies on conciliation at the expense of bringing lawsuits. Some former staff say there is merit in obtaining certain relief via conciliation, rather than taking the risks involved in litigation, particularly before an increasingly unsympathetic federal judiciary.

“Litigation is not a good tool. We get the most reform, the best conditions change, with cooperation,” says a DOJ spokesperson.

Litigation puts a jurisdiction in a posture where they don’t want to admit there are problems. So you spend lots of time convincing them they have problems. During that long period of time reform is not happening. And you’re forcing the state to spend money on litigation instead of reform.

According to DOJ, litigation brings other problems.

Litigation is not such a threat to them. There’s no financial incentive for states to solve problems. We don’t get attorneys’ fees or costs. So if they have to put in a sprinkler system in three years instead of now, they can buy time to get money together to solve problems. So litigation is a lose-lose for us.

Asked why DOJ did not use conciliation deadlines to quicken the speed of reform, a Department spokesperson responded that Section staff did exactly that. “We set conciliation deadlines all the time. That’s our approach. If an institution says it will resolve its problems, we give them space, but we also give them time lines.”

“It’s rare to have jurisdictions say, ‘Go ahead and sue us.’ They’re smart enough not to say that. We can’t sue if good faith negotiations are going on,” explains a Department spokesperson. “It’s our burden: We have to be able to demonstrate a record that they’re not negotiating in good faith.”

DOJ does not stop its enforcement efforts while waiting for the states to respond. “We’re working the paperwork. We keep writing them about serious problems, about emergencies.” The paper trail DOJ attorneys create acts as another lever toward reform. According to a DOJ spokesperson, “The private risk of liability becomes motivation [for reform] because the jurisdiction has a letter saying there’s a risk of suicide, and if a suicide happens, there’s private liability because they can’t say they didn’t know about the problem.”

***Recommendation:* DOJ should continue to use its best efforts to obtain voluntary compliance before resorting to filing actions in court. However, it should set flexible but firm time limits on its efforts to conciliate and should routinely use its congressional mandate to litigate when such efforts fail to produce substantial, measurable results. By doing so, DOJ will enhance its ability to conciliate cases by sending a clear message to states that it will not hesitate to initiate lawsuits if it cannot obtain prompt, full, and verifiable voluntary compliance with the law.**

## **Lawsuits**

While DOJ resolves most of its cases through conciliation, it has successfully used litigation to resolve complaints. In fact, as Congress recognized when it enacted CRIPA, DOJ is uniquely positioned to protect the rights of people in institutions because of its resources, expertise, and the deference judges give to federal agencies charged with interpreting and enforcing statutes. “We had almost unlimited resources once the case was filed,” says former DOJ attorney Arthur Peabody.

Most observers interviewed for this report agreed that the Section’s line attorneys were skilled and dedicated to their work. “When the state refused to settle, there were six months of onerous discovery involving more than 100 depositions and 10,000 pages of documents,” says Utter. “DOJ’s attorneys brought strong litigation skills and capacity to the table.”

However, observers criticized other aspects of the Section’s litigation work, including the length of time it took for DOJ to file a lawsuit, the practice of filing complaints and resolutions simultaneously, the trend toward judicially unenforceable agreements in lieu of consent decrees,

and the limited scope and detail contained in resolutions. “The time period between obtaining credible evidence of violations and resolution is very slow,” says Schwartz. “DOJ gives states enormous latitude about when and how to fix problems.”

Soler believes that one factor that delays CRIPA case resolutions is the Section’s practice of filing complaints and consent decrees simultaneously. Soler explains,

It takes longer because you have to figure out the solution before you even file the complaint. During that time, the state often makes changes in facilities that make the experts’ findings stale, which in turn makes it harder to sue. Instead, they should file lawsuits promptly so they can address the most harmful, life-threatening safety issues immediately with temporary restraining orders or preliminary injunctions. After that they can address less egregious issues through consent decrees.

Soler worries that the Section files simultaneous complaints and consent decrees to save the states embarrassment that might result if reporters learn of complaints and have time to investigate before the case is resolved and becomes old news. “Their goal is to save the state’s face. It should be to save kids’ lives.”

Not everyone agrees with Soler’s assessment. “The bottom line is that any kind of institutional litigation is complex and takes time,” observes a former Section attorney.

With pattern and practice cases, it’s not just one issue or one plaintiff. You have to find enough evidence to prove systemic violations, and often your hands are tied because of bad precedents and issues like determining what professional judgment means. It’s very time-consuming.

“We’ve done everything we can internally to move cases along,” says a Department spokesperson. “We assign two attorneys to each case, so if one is busy the case can still move. We have quarterly docket reviews, and we reward attorneys for moving cases quickly.”

The practice that causes the most consternation among many observers, however, is the Section’s growing willingness to resolve some of its cases with an agreement rather than a judicially enforceable consent decree. Although a Department spokesperson pointed out that the former are

easier and faster to obtain, agreements do not allow Department attorneys to sue states for contempt if they fail to live up to their promises.

“Ten years ago, DOJ addressed noncompliance with consent decrees by making a motion for contempt or moving for specific performance—they were willing to fight it out,” says one observer.

Today line attorneys feel it would be hard to get backup from their supervisors to take aggressive actions against state governments. So in day-to-day interactions with defendants, they are more likely to cajole them into doing the right thing, and settle for halfhearted efforts at compliance. In fact, sometimes they set monitoring termination dates for cases in agreements without knowing how constitutional rights will be addressed. They’ve weakened the entire process of civil rights enforcement through this approach. They’re signing unenforceable agreements and walking out of cases as quickly as possible.

Peabody agrees with the Section’s critics on this point. “Substance is more important than form, but as a bottom line we always wanted to resolve cases by enforceable documents so everyone knew what had to be done and that there would be penalties for noncompliance.”

Another former staff attorney who worked on CRIPA enforcement also questions the practice of resolving cases without the advantage of judicial oversight. “It’s important that settlements be legally binding and judicially enforceable. You can use contempt motions and other enforcement mechanisms like court monitors—it’s important to have the power of the court.”

But DOJ disagrees that court oversight is always helpful.

In some cases, we use private agreements that we don’t file with the court. We do that with cooperative jurisdictions, where we don’t need the hammer from a court. We try to resolve a case at the most cooperative level rather than ramping it up. Attorneys on the other side don’t want a court order, and some jurisdictions take [private] agreements as seriously as consent decrees.

A Department spokesperson continues, “If a jurisdiction doesn’t comply with it, they’ll see us in court.” However, as observers point out, DOJ would be unable to file a motion for contempt to force compliance with a private agreement. Instead, it would be forced to draft a complaint and

vet it through DOJ's arduous approval process—and risk the chance that approval might be denied.

In response to a draft of this report, a Department spokesperson wrote that since 2001, 4 out of 14 investigations of health care facilities were resolved by private agreements, while 10 were resolved with consent decrees or dismissals conditioned on completion of remedial measures. No information was included about how investigations of other types of institutions were resolved. CRIPA enforcement observers, including attorneys who had previously worked in the Special Litigation Section, were unanimous in their view that private agreements are never appropriate vehicles for resolving CRIPA investigations.

Another common complaint about DOJ's CRIPA enforcement was that agreements used to settle cases are too general and not sufficiently proscriptive. "They use a cookie-cutter format to relief," says Dinerstein.

"They don't see it as their job to identify a specific remedy," agrees Schwartz.

For example, they'll require defendants to develop policies and procedures to keep people from harm. Or they'll require institutions to hire sufficient staff. Specifics are never mentioned. It took years for them to agree to staff-client ratios—and that was because their own experts kept insisting on it.

Schwartz continues, "They might ask for an internal complaint process, or incident tracking system, but they won't specify how it should work, or what minimum standards should be in place."

Another observer comments, "You can trace the decline in civil rights enforcement to the emphasis on federalism. It has meant that the Federal Government stays the hell out of the state's business."

According to a former CRIPA enforcement attorney,

There have been differences in approach through the years about the level of detail in consent decrees, and the proscriptive nature of how to achieve outcomes. It's that age-old

debate that breaks down along party lines. There's merit in both positions. One view is that the most important thing is getting to the bottom line, that the method is less important than achieving the outcome. The other view is to be very proscriptive and detailed with every step along the way.

"It's a question of federalism and whether the Federal Government should micromanage the states," says a DOJ spokesperson.

[The Attorney General] didn't believe we should be doing that. If you have specific numbers on staffing, for instance, 20 years later you're arguing about dated numbers. We like broader language because it gives us outcomes, and we want states to have the latitude to figure out how to get there . . . and we'll see them at the finish line.

***Recommendation:*** DOJ should end its practice of filing simultaneous complaints and consent decrees. Instead, Department staff should file complaints promptly and use temporary restraining orders, preliminary injunctions, and other enforcement tools available while litigation is pending to protect vulnerable populations and correct dangerous conditions as quickly as possible while the case progresses toward eventual resolution.

***Recommendation:*** DOJ should revert to its earlier practice of resolving cases through enforceable consent decrees and end its growing reliance on private agreements. Doing so will increase accountability and enable Department attorneys to use contempt motions and other enforcement mechanisms to ensure that states remain in compliance with federal law until DOJ and the court are satisfied that systemic reform has occurred.

***Recommendation:*** Given that people in institutions have few means for redressing complaints, and that limited staff and resources force the Section to ration enforcement to the most egregious cases, Department staff should err on the side of being more, rather than less, prescriptive in case settlements. DOJ's staff and expert consultants are well positioned to be familiar with best practices and should be encouraged to use their expertise to provide detailed guidance to states whose substandard practices result in violations of constitutional and statutory rights. Department staff should insist on specific

**outcomes rather than more general policies and procedures to remedy violations and guard against regression when monitoring ends.**

## **Overarching Enforcement Issues**

Several practices that transcend specific stages of CRIPA enforcement merit mention here. First, DOJ's trial attorneys are widely regarded as competent and dedicated. "The line attorneys are the best attorneys I've ever worked with," says a former Section attorney. "They were very smart, committed, and hard-working." Another observer says, "Their staff lawyers are top-notch—bright and aggressive. They want to do a good job and are smart enough to do it."

Despite the talent and commitment of its staff, DOJ's work is hampered by the slow pace of complaint resolution and the lack of strategic enforcement to respond to emerging national trends, such as the inappropriate placement of people with mental health disabilities in correctional institutions. DOJ's policy of avoiding litigation, its practice of filing complaints on the same day it files consent decrees, its reliance on general rather than specific remedies, and its increasing acceptance of private, unenforceable agreements to resolve cases all work to limit the tools available to its talented staff to force states to redress constitutional and statutory violations of vulnerable populations who, in most cases, have no other means for relief.

DOJ also limits its effectiveness by using a narrow, traditional approach to law enforcement. "The Section doesn't consider any campaign other than conciliation and litigation to effect changes," says Soler.

They don't talk to local organizations, elected officials, or media. Institutions are entrenched organizations, and it takes a lot to change them—much more than just litigation. When we handle a case we talk to editorial boards, we propose legislation, and we engage parents' organizations to sustain changes in juvenile justice systems so we can fully implement the reforms that the law envisions.

***Recommendation:* DOJ should use a multifaceted approach to enforcement or, alternatively, should invite local civil rights organizations that have contacts with local media, community-based organizations, and elected officials to co-counsel cases and broaden the type of advocacy used to remedy CRIPA violations. In particular, DOJ should**

make better use of local protection and advocacy agencies charged with investigating abuse and neglect in institutions, and other nonprofit advocacy organizations with well-established records of protecting the rights of people in institutions, such as the Youth Law Center,<sup>29</sup> which protects the rights of children in juvenile justice institutions, and the ACLU's National Prison Project,<sup>30</sup> which works to protect the rights of incarcerated adults. DOJ should find ways to enhance the number of CRIPA-specific state and local contacts to improve information dissemination. The primary role for CRIPA-specific contacts would be to raise public awareness across the country with respect to CRIPA rights and protections.

## **Public Education and Outreach**

### **Web Site**

The Special Litigation Section portion of DOJ's Web site<sup>31</sup> is DOJ's primary vehicle for providing public education and outreach about CRIPA. It contains an overview of the Section's work; the statute; sample complaints, briefs, letters of findings, court decisions, and settlements; and DOJ's annual reports to Congress for the past eight years. It also provides information about how to file a complaint.

The Web site is well organized and easy to use. Of particular note: The Section recently used the Web site to solicit information about conditions and incidents at Mississippi juvenile facilities, which the Section is suing for CRIPA violations. This is unusual, as the Web site contains information only about cases that have progressed to the letter of findings stage.

***Recommendation:* The Section could make regular use of the public's assistance by including information on the Web site that identifies all facilities the Section decides to investigate.**

The Web site could also be improved by adding information that would be helpful to complainants with emergency situations. The Web site's FAQ (Frequently Asked Questions) section states that—

Even in cases where we are investigating a pattern or practice of alleged violations of individuals' federal rights, the process of investigating the facility and then taking steps to remedy any violations found is a time-consuming process. Therefore, if you have an emergency situation, you should take steps to resolve the problem in addition to contacting our office.<sup>32</sup>

***Recommendation:*** The Section could provide greater assistance to persons facing emergency situations by including a brief description of protection and advocacy agencies that provide free legal assistance to persons with disabilities and are charged with monitoring abuse and neglect in institutions, as well as the Web site for the agencies' umbrella organization, the National Association of Protection and Advocacy Systems (NAPAS).<sup>33</sup> The home page for NAPAS includes contact information for protection and advocacy organizations throughout the country. To ensure that people who do not have identified disabilities but are in institutions also have referrals to agencies that can help them address emergency situations, the Section should also include referrals to well-regarded advocacy organizations such as the Youth Law Center and the American Civil Liberties Union's National Prison Project.

***Recommendation:*** Finally, the Section should expand its excellent Web site by including information about all its cases rather than just a representative sample.

A Department spokesperson says that "except for documents created before our system was computerized, DOJ's Web site for the Special Litigation Section routinely publishes all findings letters, complaints, settlements, and court decisions." However, DOJ's annual report to Congress for 2003 states that DOJ obtained "20 substantial agreements" between January 2001 and mid-March 2004.<sup>34</sup> The Web site contains approximately half that number for that time period.

## **Media**

The Special Litigation Section makes little use of the media as a vehicle for public outreach, nor does it regularly issue media announcements of new investigations, the issuance of findings letters, or the initiation of lawsuits. Although DOJ rarely publicized its victories under CRIPA in the past, lately it has done so more frequently.

By choosing not to make better use of the press, the Section undermines its ability to enforce CRIPA. It loses the opportunity to increase public knowledge about the law and to augment its ability to learn about problems that CRIPA was meant to address. By opting not to advertise investigations, it weakens its ability to gather information from people with relevant evidence. By deciding to avoid coverage of its letters of findings, it loses the opportunity to win reforms that often follow media exposés of egregious conditions. And by remaining silent about its victories, it fails to maximize the deterrent effect of its work.

***Recommendation:* DOJ should use the media strategically to educate the public about the rights of people in institutions and the Federal Government’s role in protecting those rights. DOJ should also inform the media about its investigations, so that interested parties can send DOJ relevant information that may prove helpful. Finally, DOJ should make a greater effort to publicize its victories, to inspire people who reside in institutions and their advocates to report CRIPA violations to DOJ and to increase voluntary compliance with the law by institutions.**

A Department spokesperson who reviewed a draft of this report wrote that “DOJ routinely issues press releases regarding our enforcement activities, documenting significant actions pursuant to CRIPA. These press releases can be found on the Civil Rights Division’s Web site at [www.usdoj.gov/crt/pressindex.html](http://www.usdoj.gov/crt/pressindex.html).” However, a spot-check of this Web site revealed no information or media release regarding several settlements listed in the Special Litigation Unit Web site, including those reached with the Santa Fe County Adult Detention Center (11/1/04), the W. J. Mamey Training School in Michigan (1/5/05), and the Woodward and Greenwood State Resource Centers in Iowa (12/24/04).

## **Reports to Congress**

CRIPA requires DOJ to provide Congress with detailed information about its work to protect the rights of people who reside in institutions. However, DOJ’s annual reports to Congress do not always provide the information the statute requires, as Appendix II of this report makes clear. Specifically, the law requires DOJ to provide the following:

1. a statement of the number, variety, and outcome of all actions instituted pursuant to this subchapter, including the history of, precise reasons for, and procedures followed in initiation or intervention in each case in which action was commenced;
2. a detailed explanation of the procedures by which DOJ has received, reviewed, and evaluated petitions or complaints regarding conditions in institutions;
3. an analysis of the impact of actions instituted pursuant to this subchapter, including, when feasible, an estimate of the costs incurred by States and other political subdivisions;
4. a statement of the financial, technical, or other assistance which has been made available from the United States to the State in order to assist in the correction of the conditions which are alleged to have deprived a person of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States; and
5. the progress made in each Federal institution toward meeting existing promulgated standards for such institutions or constitutionally guaranteed minima.<sup>35</sup>

Although DOJ has begun to provide information about staff and budget devoted to CRIPA enforcement, reports filed before 2001 lack this information. Equally troubling, DOJ's annual reports mention investigations launched with no tracking to indicate outcomes. For example, the reports indicate that an investigation of the Chicago-Read Mental Health Center was begun in fiscal year 1992 and closed 10 years later. However, there is no information about the findings or outcome of the investigation. Similarly, DOJ's reports state that notices of intent to investigate were sent to the Arizona State Hospital and the Bangor and Augusta Mental Health Institutes in Maine in 1989, but there is no further word on either case.

The reports also fail to explain the wide variation in enforcement from year to year. For example, in 1981, 1982, 1984, 1987, and 1995, DOJ issued no letters of findings; in 1988 DOJ issued 14 such letters; and in 1998 DOJ issued 56 letters. In addition, the information contained in the reports differs from year to year, making it impossible to track or compare data.

In short, DOJ's annual reports make it impossible for Congress or other interested parties to monitor DOJ's work. More important, the absence of strong annual reports undermines DOJ's ability to leverage its work through voluntary compliance and serves to discourage people in institutions from reporting illegal conditions in institutions to DOJ.

***Recommendation:*** DOJ should improve its CRIPA enforcement reports to Congress by including the full range of data required under the statute. Doing so will increase accountability and enable the public to better understand the Federal Government's enforcement of the rights of people who reside in institutions.



## Conclusion

Congress enacted CRIPA to give DOJ authority to initiate and intervene in lawsuits to protect the rights of people in institutions. Despite this mandate, DOJ has not made full use of its power to use the courts to force institutions to minimally comply with constitutional and statutory rights. Instead, it has placed too much emphasis on conciliation to secure compliance—even when conciliation has taken years to secure. In a growing trend, when DOJ has initiated lawsuits, it has agreed to settle increasing numbers of its cases with private agreements that are not enforceable by courts. Moreover, regardless of the method of enforcement, DOJ's work has been slow—even in cases involving egregious conditions such as imminent threats to life. It is not unusual for investigations to take many months to complete, and lawsuits often are not initiated for many more months thereafter.

Thus far, DOJ has chosen not to enforce CRIPA in a strategic way to address emerging national trends, such as the inappropriate incarceration of individuals because of behavior that is a manifestation of disability. The lack of strategic enforcement has further undermined DOJ's ability to fulfill Congress's intent to provide strong protection of the rights of people who reside in institutions. DOJ's annual reports to Congress do not always contain the information the statute requires and, thus, make it impossible for Congress and other stakeholders to monitor DOJ's performance.

Despite these serious shortcomings, much of DOJ's work has been exemplary. The investigations performed by DOJ staff and consultants are widely lauded. Virtually all the experts interviewed for this report regard DOJ's staff attorneys as highly skilled and dedicated. In recent years, DOJ has begun to consider not just the conditions in institutions but, more fundamentally, whether the people in them need to be there at all—this is an important and promising new trend. DOJ's Web site is user-friendly and provides useful information about DOJ's CRIPA enforcement.

“Has the promise been fulfilled?” Protection of human and civil rights is still needed today, whether people reside in institutions or are transitioned to live in the community. People with disabilities, advocates, families, and the media continue to call attention to egregious conditions

and allegations of abuse and neglect. If there is one overall recommendation that would lead to stronger CRIPA enforcement, it is that DOJ should begin to make full, timely, and strategic use of its authority under the statute to use the courts to force recalcitrant states to comply with the law. Additionally, DOJ should ensure that the settlements it obtains are fully enforceable by courts, as Congress intended. Only then will DOJ be able to fully realize Congress' plan to rid this nation of unconscionable conditions that plague the lives of vulnerable people.

# Appendix I. The Civil Rights of Institutionalized Persons Act

*42 U.S.C. § 1997 et seq.*

## § 1997. Definitions

As used in this subchapter—

(1) The term “institution” means any facility or institution—

(A) which is owned, operated, or managed by, or provides services on behalf of any State or political subdivision of a State; and

(B) which is—

(i) for persons who are mentally ill, disabled, or retarded, or chronically ill or handicapped;

(ii) a jail, prison, or other correctional facility;

(iii) a pretrial detention facility;

(iv) for juveniles—

(I) held awaiting trial;

(II) residing in such facility or institution for purposes of receiving care or treatment; or

(III) residing for any State purpose in such facility or institution (other than a residential facility providing only elementary or secondary education that is not an institution in which reside juveniles who are adjudicated delinquent, in need of supervision, neglected, placed in State custody, mentally ill or disabled, mentally retarded, or chronically ill or handicapped); or

(v) providing skilled nursing, intermediate or long-term care, or custodial or residential care.

(2) Privately owned and operated facilities shall not be deemed “institutions” under this subchapter if—

(A) the licensing of such facility by the State constitutes the sole nexus between such facility and such State;

(B) the receipt by such facility, on behalf of persons residing in such facility, of payments under title XVI, XVIII [42 U.S.C. 1381 et seq., 1395 et seq.], or under a State plan approved under title XIX [42 U.S.C. 1396 et seq.], of the Social Security Act, constitutes the sole nexus between such facility and such State; or

(C) the licensing of such facility by the State, and the receipt by such facility, on behalf of persons residing in such facility, of payments under title XVI, XVIII [42 U.S.C. 1381 et seq., 1395 et seq.], or under a State plan approved under title XIX [42 U.S.C. 1396 et seq.], of the Social Security Act, constitutes the sole nexus between such facility and such State;

(3) The term “person” means an individual, a trust or estate, a partnership, an association, or a corporation;

(4) The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States;

(5) The term “legislative days” means any calendar day on which either House of Congress is in session.

#### **§ 1997a. Initiation of civil actions**

(a) Discretionary authority of Attorney General; preconditions

Whenever the Attorney General has reasonable cause to believe that any State, political subdivision of a State, official, employee, or agent thereof, or other person acting on behalf of a State or political subdivision of a State is subjecting persons residing in or confined to an institution, as defined in section 1997 of this title, to egregious or flagrant conditions which deprive such persons of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing such persons to suffer grievous harm, and that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities, the Attorney General, for or in the name of the United States, may institute a civil action in any appropriate United States district court against such party for such equitable relief as may be appropriate to insure the minimum corrective measures necessary to insure the full enjoyment of such rights, privileges, or immunities, except that such equitable relief shall be available under this subchapter to persons residing in or confined to an institution as defined in section 1997(1)(B)(ii) of this title only insofar as such persons are subjected to conditions which deprive them of rights, privileges, or immunities secured or protected by the Constitution of the United States.

(b) Discretionary award of attorney fees

In any action commenced under this section, the court may allow the prevailing party, other than the United States, a reasonable attorney’s fee against the United States as part of the costs.

(c) Attorney General to personally sign complaint

The Attorney General shall personally sign any complaint filed pursuant to this section.

**§ 1997b. Certification requirements; Attorney General to personally sign certification**

(a) At the time of the commencement of an action under section 1997a of this title the Attorney General shall certify to the court—

(1) that at least 49 calendar days previously the Attorney General has notified in writing the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution of—

(A) the alleged conditions which deprive rights, privileges, or immunities secured or protected by the Constitution or laws of the United States and the alleged pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities;

(B) the supporting facts giving rise to the alleged conditions and the alleged pattern or practice, including the dates or time period during which the alleged conditions and pattern or practice of resistance occurred; and when feasible, the identity of all persons reasonably suspected of being involved in causing the alleged conditions and pattern or practice at the time of the certification, and the date on which the alleged conditions and pattern or practice were first brought to the attention of the Attorney General; and

(C) the minimum measures which the Attorney General believes may remedy the alleged conditions and the alleged pattern or practice of resistance;

(2) that the Attorney General has notified in writing the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution of the Attorney General's intention to commence an investigation of such institution, that such notice was delivered at least seven days prior to the commencement of such investigation and that between the time of such notice and the commencement of an action under section 1997a of this title—

(A) the Attorney General has made a reasonable good faith effort to consult with the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution, or their designees, regarding financial, technical, or other assistance which may be available from the United States and which the Attorney General believes may assist in the correction of such conditions and pattern or practice of resistance;

(B) the Attorney General has encouraged the appropriate officials to correct the alleged conditions and pattern or practice of resistance through informal methods of conference, conciliation and persuasion, including, to the extent feasible, discussion of the possible costs and fiscal impacts of alternative minimum corrective measures, and it is the Attorney General's opinion that reasonable efforts at voluntary correction have not succeeded; and

(C) the Attorney General is satisfied that the appropriate officials have had a reasonable time to take appropriate action to correct such conditions and pattern or practice, taking into consideration the time required to remodel or make necessary changes in physical facilities or relocate residents, reasonable legal or procedural requirements, the urgency of the need to correct such conditions, and other circumstances involved in correcting such conditions; and

(3) that the Attorney General believes that such an action by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(b) The Attorney General shall personally sign any certification made pursuant to this section.

### **§ 1997c. Intervention in actions**

(a) Discretionary authority of Attorney General; preconditions; time period

(1) Whenever an action has been commenced in any court of the United States seeking relief from egregious or flagrant conditions which deprive persons residing in institutions of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing them to suffer grievous harm and the Attorney General has reasonable cause to believe that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities, the Attorney General, for or in the name of the United States, may intervene in such action upon motion by the Attorney General.

(2) The Attorney General shall not file a motion to intervene under paragraph (1) before 90 days after the commencement of the action, except that if the court determines it would be in the interests of justice, the court may shorten or waive the time period.

(b) Certification requirements by Attorney General

(1) The Attorney General shall certify to the court in the motion to intervene filed under subsection (a) of this section—

(A) that the Attorney General has notified in writing, at least fifteen days previously, the Governor or chief executive officer, attorney general or chief legal officer of the appropriate State or political subdivision, and the director of the institution of—

(i) the alleged conditions which deprive rights, privileges, or immunities secured or protected by the Constitution or laws of the United States and the alleged pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities;

(ii) the supporting facts giving rise to the alleged conditions, including the dates and time period during which the alleged conditions and pattern or practice of resistance occurred; and

(iii) to the extent feasible and consistent with the interests of other plaintiffs, the minimum measures which the Attorney General believes may remedy the alleged conditions and the alleged pattern or practice of resistance; and

(B) that the Attorney General believes that such intervention by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(2) The Attorney General shall personally sign any certification made pursuant to this section.

(c) Attorney General to personally sign motion to intervene

The Attorney General shall personally sign any motion to intervene made pursuant to this section.

(d) Discretionary award of attorney fees; other award provisions unaffected

In any action in which the United States joins as an intervenor under this section, the court may allow the prevailing party, other than the United States, a reasonable attorney's fee against the United States as part of the costs. Nothing in this subsection precludes the award of attorney's fees available under any other provisions of the United States Code.

#### **§ 1997d. Prohibition of retaliation**

No person reporting conditions which may constitute a violation under this subchapter shall be subjected to retaliation in any manner for so reporting.

#### **§ 1997e. Suits by prisoners**

(a) Applicability of administrative remedies.

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

(b) Failure of State to adopt or adhere to administrative grievance procedure

The failure of a State to adopt or adhere to an administrative grievance procedure shall not constitute the basis for an action under section 1997a or 1997c of this title.

(c) Dismissal

(1) The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

(2) In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

(d) Attorney's fees

(1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 1988 of this title, such fees shall not be awarded, except to the extent that—

(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988 of this title; and

(B)(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or

(ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

(3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of Title 18, for payment of court-appointed counsel.

(4) Nothing in this subsection shall prohibit a prisoner from entering into an agreement to pay an attorney's fee in an amount greater than the amount authorized under this subsection, if the fee is paid by the individual rather than by the defendant pursuant to section 1988 of this title.

(e) Limitation on recovery

No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

(f) Hearings

(1) To the extent practicable, in any action brought with respect to prison conditions in Federal court pursuant to section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility, pretrial proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the facility in which the prisoner is confined.

(2) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.

(g) Waiver of reply

(1) Any defendant may waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983 of this title or any other Federal law. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint. No relief shall be granted to the plaintiff unless a reply has been filed.

(2) The court may require any defendant to reply to a complaint brought under this section if it finds that the plaintiff has a reasonable opportunity to prevail on the merits.

(h) Definition

As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

**§ 1997f. Report to Congress**

The Attorney General shall include in the report to Congress on the business of the Department of Justice prepared pursuant to section 522 of Title 28—

(1) a statement of the number, variety, and outcome of all actions instituted pursuant to this subchapter including the history of, precise reasons for, and procedures followed in initiation or intervention in each case in which action was commenced;

- (2) a detailed explanation of the procedures by which the Department has received, reviewed, and evaluated petitions or complaints regarding conditions in institutions;
- (3) an analysis of the impact of actions instituted pursuant to this subchapter, including, when feasible, an estimate of the costs incurred by States and other political subdivisions;
- (4) a statement of the financial, technical, or other assistance which has been made available from the United States to the State in order to assist in the correction of the conditions which are alleged to have deprived a person of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States; and
- (5) the progress made in each Federal institution toward meeting existing promulgated standards for such institutions or constitutionally guaranteed minima.

#### **§ 1997g. Priorities for use of funds**

It is the intent of Congress that deplorable conditions in institutions covered by this subchapter amounting to deprivations of rights protected by the Constitution or laws of the United States be corrected, not only by litigation as contemplated in this subchapter, but also by the voluntary good faith efforts of agencies of Federal, State, and local governments. It is the further intention of Congress that where Federal funds are available for use in improving such institutions, priority should be given to the correction or elimination of such unconstitutional or illegal conditions which may exist. It is not the intent of this provision to require the redirection of funds from one program to another or from one State to another.

#### **§ 1997h. Notice to Federal departments**

At the time of notification of the commencement of an investigation of an institution under section 1997a of this title or of the notification of an intention to file a motion to intervene under section 1997c of this title, and if the relevant institution receives Federal financial assistance from the Department of Health and Human Services or the Department of Education, the Attorney General shall notify the appropriate Secretary of the action and the reasons for such action and shall consult with such officials. Following such consultation, the Attorney General may proceed with an action under this subchapter if the Attorney General is satisfied that such action is consistent with the policies and goals of the executive branch.

#### **§ 1997i. Disclaimer respecting standards of care**

Provisions of this subchapter shall not authorize promulgation of regulations defining standards of care.

#### **§ 1997j. Disclaimer respecting private litigation**

The provisions of this subchapter shall in no way expand or restrict the authority of parties other than the United States to enforce the legal rights which they may have pursuant to existing law with regard to institutionalized persons. In this regard, the fact that the Attorney General may be

conducting an investigation or contemplating litigation pursuant to this subchapter shall not be grounds for delay of or prejudice to any litigation on behalf of parties other than the United States.



## **Appendix II. Data from the Department of Justice’s Annual Reports to Congress, Letters of Investigative Findings, Complaints, Briefs, Settlements, and Court Decisions**

This appendix contains charts that describe how the Department of Justice (DOJ) has implemented CRIPA and reported its work. Data were culled from a variety of sources, including the Department’s annual reports to Congress, letters of investigative findings, complaints, briefs, settlements, and court decisions. Where there were no data, an “X” is placed in empty fields in these charts.

### **Enforcement Timelines**

Charts A through E use data gleaned primarily from individual documents rather than summary data to calculate the length of time that elapsed between the Department’s implementation of the stages of CRIPA investigation. Relevant information was provided in a consistent manner for only 18 of the more than 300 CRIPA investigations reviewed for this report. Of these, 13 cases included all of the data needed to show the time elapsed from—

- a. the date an investigation was initiated to the date a letter of findings was issued (2 months to 3 years),
- b. a letter of findings date to the date a lawsuit was filed (5 months to 10 years), and
- c. an investigation initiation date to the date a lawsuit was filed (18 months to 5 years).

In nearly all cases, more than a year elapsed between the issuance of a findings letter and the initiation of a lawsuit.

**Chart A. Institutions for People with Psychiatric Disabilities or Mental Illnesses**

State and/or Institution	Notice of Intent to Investigate (7-Day Notice)	Date Investigation Initiated	Date Findings Letter Issued (49-Day Notice)	Investigation Initiated to Letter of Findings	Date Lawsuit Filed	Type of Interim and/or Closing Action(s)	Letter of Findings to Lawsuit Filed	Investigation Initiation to Lawsuit Filed
VA: Central State Hospital (Petersburg)	March 24, 1997	April 28, 1997	June 30, 1997	2 months	May 6, 1999, and settlement date	Oct. 4, 2001, approved joint motion to dismiss	1 year 11 months	2 years 8 days

**Chart B. Institutions for People with Developmental Disabilities, Including Intellectual Disabilities**

State and/or Institution	Notice of Intent to Investigate (7-Day Notice)	Date Investigation Initiated	Date Findings Letter Issued (49-Day Notice)	Investigation Initiated to Letter of Findings	Date Lawsuit Filed	Type of Interim and/or Closing Action(s)	Letter of Findings to Lawsuit Filed	Investigation Initiation to Lawsuit Filed
IL: Howe Development Center	April 18, 1986	Feb. 1989	July 31, 1989	5 months	Jan. 18, 1992; consent decree on Jan. 3, 1994	Dismissed Feb. 14, 1996	2 years 6 months 4 years 5 months	2 years 11 months
MD: Rosewood Center	Nov. 7, 1980	Nov. 1980	Feb. 19, 1982	1 year 3 months	Jan. 17, 1985, and consent decree date	June 4, 1986, not complying; Dec. 12, 1988, decree modification	2 years 11 months	4 years 2 months
NM: Ft. Stanton Hospital and Training School	Nov. 30, 1984	Dec. 18, 1984	Dec. 24, 1985	1 year 11 months 6 days	Aug. 8, 1986 (after state rejected June 5, 1986, consent decree)	1990 closed facility and moved last resident to community; 1998 (monitoring)	7 months 15 days	1 year 8 months

State and/or Institution	Notice of Intent to Investigate (7-Day Notice)	Date Investigation Initiated	Date Findings Letter Issued (49-Day Notice)	Investigation Initiated to Letter of Findings	Date Lawsuit Filed	Type of Interim and/or Closing Action(s)	Letter of Findings to Lawsuit Filed	Investigation Initiation to Lawsuit Filed
PA: Embreeville Center	Sept. 11, 1986	Sept. 1986 initial investigation; "new" tour March 1989	May 1988; then FY92 (no specific date stated) re: new tour findings	2 years initial data; "new" tour range: 3 years to 3 years 6 months	Sept. 12, 1994, consent decree with community-based services	Closed 1998 with monitoring of community services FY03; no specific date	10 years (from the 7-day letter); 6 years 4 months (from "new" tour letter)	5 years 6 months; possibly 3 years more from notice to retour

**Chart C. Publicly Funded/Operated Nursing Homes**

State and/or Institution	Notice of Intent to Investigate (7-Day Notice)	Date Investigation Initiated	Date Findings Letter Issued (49-Day Notice)	Investigation Initiated to Letter of Findings	Date Lawsuit Filed	Type of Interim and/or Closing Action(s)	Letter of Findings to Lawsuit Filed	Investigation Initiation to Lawsuit Filed
PA: Philadelphia Nursing Home**	Aug. 17, 1995	Nov. 1995	FY97 (specific data not stated)	1 month to 12 months	August 13, 1998, and settlement agreement	Nov. 7, 2001, joint dismissal motion approved	10 months to 1 year 10 months	2 years 9 months
CA: Laguna Honda Hospital and Rehab Center	FY98 (city); April 23, 2003, letter broadened to include state	Dec. 2001 (city); re tour March 2002 (city); and August 2003 (state)	May 6, 1998 (city/county); April 1, 2003, second letter (city/county); Aug. 3, 2004 (state)	3 years 7 months (city/county); 1 year (state)	X	Dec. 18, 2003, court approved settlement city/county	X	X

\*\*Reported as the first case stemming from joint investigation under CRIPA and the False Claims Act, 31 U.S.C. § 3729 et seq. and involving cooperative effort by the Department of Justice and the U.S. Department of Health and Human Services.

**Chart D. Juvenile Justice Institutions Housing People with Disabilities**

State and/or Institution	Notice of Intent to Investigate (7-Day Notice)	Date Investigation Initiated	Date Findings Letter Issued (49-Day Notice)	Investigation Initiated to Letter of Findings	Date Lawsuit Filed	Type of Interim and/or Closing Action(s)	Letter of Findings to Lawsuit Filed	Investigation Initiation to Lawsuit Filed
NJ: Essex County Youth House	Jan. 6, 1986	March 1986	July 23, 1986	4 months	Dec. 3, 1987, and consent decree; Nov. 4, 2003, decree amended	May 6, 1994, remedial order; April 4, 1996, stipulation	1 year 4 months 10 days	1 year 9 months
LA: Bridge City, Monroe, Jetson, and Tallulah, Correctional Centers for Youth	April 25, 1996	June 3, 1996	July 18, 1997	1 year 15 days	Nov. 5, 1998; 1999 settlement agreement	FY03 (no specific date stated); joint dismissal motion re: compliance with corrections	1 year 4 months	3 years 5 months
MS: Two Training Schools (Oakley and Columbia)	May 8, 2002	June 24, 2002	June 19, 2003	1 year (11 months 5 days)	Dec. 2003	July 2004 DOJ request for public input	5 months	1 year 6 months

**Chart E. Adult Jails and Prisons Housing Incarcerated People with Disabilities**

State and/or Institution	Notice of Intent to Investigate (7-Day Notice)	Date Investigation Initiated	Date Findings Letter Issued (49-Day Notice)	Investigation Initiated to Letter of Findings	Date Lawsuit Filed	Type of Interim and/or Closing Action(s)	Letter of Findings to Lawsuit Filed	Investigation Initiation to Lawsuit Filed
MI: Scott Correctional; Crane Correctional	June 8, 1994 June 9, 1994	June 1994 access denied	March 27, 1995	9 months	March 10, 1997	Consent decree May 6, 1999	2 years	1 year 9 months
CA: CA Medical Facility Dept. of Corrections	March 7, 1985	March 1985	Jan. 6, 1987	1 year 9 months	Sept. 12, 1989; second consent decree March 1990	FY91 (no specific date stated); stipulations agreed; Feb. 14, 1997 dismissal	2 years 8 months 6 days	2 years 9 months
ID: Ada County Jail	X	Jan. 3, 1983	April 18, 1984	1 year 3 months	May 23, 1985, and settlement	Motion to dismiss decree Dec. 18, 1986	1 year 1 month 5 days	2 years 5 months
AR: Cummins Unit, AR Dept. of Corrections Lincoln County	Sept. 18, 1985	July 28, 1986; expanded investigation Aug. 21, 1986	Aug. 2, 1989	3 years	No lawsuit filed	Jan. 1994 investigation closed after improvements and corrections; no further information	X	X
AR: Crittenden County Jail (Marion County)	Nov. 7, 1986	Nov. 1986	June 1, 1987	8 months	July 13, 1989, and consent decree	Dec. 19, 1990; Nov. 27, 2001, joint dismissal (court approved)	2 years 1 month 12 days	2 years 8 months
MD: Baltimore City Detention Center	Oct. 16, 2000	Dec. 12, 2000	August 13, 2002	1 year 8 months	X	X	X	X

State and/or Institution	Notice of Intent to Investigate (7-Day Notice)	Date Investigation Initiated	Date Findings Letter Issued (49-Day Notice)	Investigation Initiated to Letter of Findings	Date Lawsuit Filed	Type of Interim and/or Closing Action(s)	Letter of Findings to Lawsuit Filed	Investigation Initiation to Lawsuit Filed
MD: Wicomico County Detention	Oct. 5, 2000	Jan. 26, 2001	Sept. 9, 2002	1 year 9 months	X	Private agreement July 6, 2004	X	X
OK: LeFlore County Jail	Nov. 8, 2002	Dec. 10, 2002	April 17, 2003	4 months	X	X	X	X

**Chart F. Number of Complaints Received, Investigations Initiated, and Letters of Findings Issued (1981–2003)**

According to DOJ staff, most complaints enumerated in this chart were CRIPA related. Before 1990, complete data were not available on the number of complaints and referrals received. Since 1990, inmates writing about conditions in their institutions formed the bulk of people who wrote letters. Most were not at a level of egregiousness to activate Department preliminary investigation leading to a potential CRIPA investigation. Referrals to the Special Litigation Section were called “referrals,” “responses,” or “inquiries” in the Department’s annual reports to Congress. The term used in each annual report is used in this chart.

Fiscal Year	Complaints Received	Referral: White House/Congress	Investigations Initiated (New)	Letters of Findings Issued
1981	X	X	12	3
1982	X	X	15	9
1983	X	X	9	6
1984	X	X	9	13
1985	X	X	13	10
1986	X	X	16	14
1987	X	X	5	11
1988	X	X	2	6
1989	X	X	3	4
1990	1,585 letters	145 referrals	5	3
1991	1,468 letters	41 referrals	9	9
1992	2,800 letters	40 referrals	7	5
1993	2,904 letters	175 referrals	20	7
1994	2,684 letters	160 responses	16	17
1995	2,753 letters	85 referrals	27	24
1996	2,740 letters; 360 calls	110 referrals	7	13
1997	3,160 letters; 400 calls	85 responses	16	8
1998	3,200 letters; 400 calls	84 referrals	10	12
1999	9,300 letters; 400 calls	21 responses	5	6
2000	7,300 letters; 1,000 calls	30 responses	4	6
2001	7,700 letters; 100 calls	17 responses	6	2
2002	6,200 letters; 500 calls	140 inquiries	16	3
2003	4,000+ letters; 100+ calls	195 responses	12	18

**Chart G. Number of New CRIPA Lawsuits Filed, Facility Location (1981–2003)**

The majority of CRIPA lawsuits were filed simultaneously with consent decrees. Among the few suits filed by DOJ without a consent decree filed on or close to the date of the complaint were the suits against Louisiana (1999) involving four correctional centers for youth where a consent decree was filed five years after the suit was filed, and the Buffalo Psychiatric Center in New York (1988) where a consent decree was filed after three years. Few “intervention” cases were included, such as the Department’s intervention in private cases against Louisiana’s Feliciana Forensic Facility (1982), Houston City Jail in Texas (1983), Mississippi’s Jones County Jail (1993), Montana State Prison and Louisiana’s Angola Penitentiary (1994), Angola Penitentiary in Louisiana (1994), Mississippi’s Simpson County Jail (1995), and Florida’s G. Pierce Wood Memorial Hospital (1998). There was also an emergency consent decree on behalf of youth in 20 of Puerto Rico’s juvenile justice facilities in 1994. The chart below also shows that lawsuits against Mississippi accounted for 14 of the 19 new cases filed in 1994 and 1995.

Fiscal Year	Count of Cases	Facility and State	Date Lawsuit Filed	Consent Decree Filed
1981	None filed	X	X	X
1982	1 intervention	Feliciana Forensic Facility, LA ( <i>Davis v. Henderson</i> [E.D.] La)	June 4, 1982	December 2, 1983
1983	1	Oahu Community Correctional Center and Halawa High Security Facility, Honolulu, Hawaii [State won dismissal, May 10, 1983]	March 4, 1983	X
	1 intervention	Houston City Jail, Texas [Case closed July 4, 1984, before permission granted]	August 23, 1983	X
1984	3	Jackson, Marquette, and Ionia Prisons, Michigan	January 17, 1984	July 16, 1984
		Newark City Jail, New Jersey	February 2, 1984	February 2, 1984
		Central State Hospital and Logansport State Hospital, Indiana	April 6, 1984	April 6, 1984
1985	5	Rosewood Center, Maryland	January 17, 1985	January 17, 1985
		Bedford County Jail, Tennessee	January 17, 1985	January 17, 1985

<b>Fiscal Year</b>	<b>Count of Cases</b>	<b>Facility and State</b>	<b>Date Lawsuit Filed</b>	<b>Consent Decree Filed</b>
		Worcester State Hospital, Massachusetts	February 11, 1985	August 25, 1987
		Ada County Jail, Idaho	May 23, 1985	May 23, 1985
		Talledega County Jail, Alabama	September 17, 1985	September 17, 1985
1986	7 (includes 1 investigation access suit)	Los Angeles County Juvenile Halls [Investigation access suit; added mental health services memorandum of agreement: December 12, 2002]	March 27, 1986	X
		South Carolina State Hospital	June 24, 1986	June 24, 1986
		Wheat Ridge Center, Colorado	July 10, 1986	July 22, 1986
		Southbury Training Center, Connecticut	July 25, 1986	July 25, 1986
		Fairview Training Center, Oregon	July 28, 1986	July 28, 1986
		Ypsilanti Regional Psychiatric Hospital, Michigan	August 7, 1986	August 7, 1986
		Ft. Stanton Hospital & Training School, New Mexico	August 8, 1986 [became class action suit July 1987]	[rejected by state]
1987	5	Elgin Mental Health Center, Illinois	October 2, 1986	February 17, 1987
		Metropolitan Developmental Center, Louisiana	January 5, 1987	July 23, 1987
		Julia Tutweiler Prison, Alabama	January 6, 1987	X
		Jefferson County Jail, Ohio	April 9, 1987	April 9, 1987
		Kalamazoo Regional Psychiatric Hospital, Michigan	September 16, 1987	September 16, 1987
1988	3	Golden Grove Adult Correctional Facility, Virgin Islands	November 21, 1987	November 21, 1987
		Essex County Youth House, New Jersey	December 3, 1987	December 3, 1987
		Buffalo Psychiatric Center, New York	February 5, 1988	September 12, 1991
1989	3	Santa Rita Jail, California	June 12, 1989	June 12, 1989
		Crittenden County Jail, Arkansas	July 13, 1989	December 19, 1990
		California Medical Facility (Vacaville)	September 12, 1989	September 12, 1989
1990	3	Los Lunas Hospital and Training School, New Mexico	October 27, 1989	February 2, 1990

Fiscal Year	Count of Cases	Facility and State	Date Lawsuit Filed	Consent Decree Filed
1991	3 (includes 1 access suit)	Ellisville State School, Mississippi	June 21, 1990	June 21, 1990
		Napa State Hospital, California	September 17, 1990	September 17, 1990
		Guam Adult Detention Center, Rosario Detention Facility, Inpatient Unit, Guam Department of Mental Health and Substance Abuse	February 13, 1991	May 16, 1991
1992	3	Hawaii State Hospital, Hawaii	March 7, 1991	July 1991
		San Diego County Jails, California [investigation access suit]	June 5, 1991	X
		Arlington Developmental Center, Tennessee	January 21, 1992	November 1993
1993	1	Howe Developmental Center, Illinois	January 18, 1992	January 3, 1993
		Ebensburg Center, Pennsylvania	February 10, 1992	No data
		Jones County Jail, Mississippi [complaint in intervention]	September 29, 1993	March 1, 1994
1994	10	Conecuh County Jail, Alabama	February 16, 1994	January 24, 1995
		Boswell Regional Hospital, Mississippi	March 9, 1994	March 9, 1994
		Angola Penitentiary, Louisiana [complaint in intervention]	July 21, 1994	X
1995	9 (includes 1 access suit)	20 Juvenile Justice facilities, Commonwealth of Puerto Rico	X	[August 22, 1994 emergency decree] October 6, 1994
		Embreeville Center, Pennsylvania	September 12, 1994	September 12, 1994
		Grenada County Jail, Mississippi	September 19, 1994	September 19, 1994
		Grenada City Jail, Mississippi	September 19, 1994	September 19, 1994
		Scott County Jail, Mississippi	September 19, 1994	September 19, 1994
		Neshoba County Jail, Mississippi	September 19, 1994	September 19, 1994
		Alcorn County Jail, Mississippi	September 20, 1994	September 20, 1994
		Tupelo City Jail, Mississippi	November 14, 1994	March 7, 1995
		Forrest City Jail, Mississippi	November 14, 1994	November 14, 1994

<b>Fiscal Year</b>	<b>Count of Cases</b>	<b>Facility and State</b>	<b>Date Lawsuit Filed</b>	<b>Consent Decree Filed</b>
	intervention)	Corinth City Jail, Mississippi	November 22, 1994	November 22, 1994
		Montana State Prison, Mississippi	December 1, 1994	January 31, 1997
		Harrison County Jail, Mississippi	January 12, 1995	January 12, 1995
		Sunflower County Jail, Mississippi	April 20, 1995	April 26, 1995
		Forrest County Jail, Mississippi	April 20, 1995	April 20, 1995
		Simpson County Jail, Mississippi [complaint in intervention]	April 25, 1995	X
		District of Columbia Village	May 19, 1995	July 5, 1995
1996	4	13 Juvenile Facilities, Kentucky	November 13, 1995	November 13, 1995
		Eastern State Hospital & Hancock Geriatric Facility, Virginia	March 4, 1996	July 18, 1996
		Northern Virginia Training Center	March 6, 1996	July 18, 1996
		Memphis Mental Health Institute, Tennessee	March 15, 1996	March 27, 1996
1997	6	4 Developmental Facilities, Tennessee	November 22, 1996	July 3, 1997
		Crane Correctional, Scott Correctional, Michigan	March 10, 1997	May 6, 1999
		4 Women's Prisons, Arizona	March 10, 1997	March 10, 1997
		Central and Southern Developmental Facilities, Wisconsin	April 4, 1997	April 4, 1997
		Northern Virginia Mental Health Institute	June 10, 1997	June 10, 1997
		Clay County Jail	August 20, 1997	August 20, 1997
1998	6 (includes 1 intervention)	Maricopa County Jails, Arizona	October 31, 1998	October 31, 1998
		Dooly County Jail, Georgia	January 5, 1998	January 5, 1998
		13 Juvenile Justice Facilities, Georgia	March 18, 1998	March 18, 1998
		G. Pierce Wood Memorial Hospital, Florida [complaint in intervention]	April 2, 1998	X
		Philadelphia Nursing Home	August 13, 1998	August 13, 1998
		Louisiana State Penitentiary [settlement agreement filed]	X	September 24, 1998

<b>Fiscal Year</b>	<b>Count of Cases</b>	<b>Facility and State</b>	<b>Date Lawsuit Filed</b>	<b>Consent Decree Filed</b>
1999	7	Jetson, Tullulah, Bridge City, and Swanson/Monroe Correctional Centers for Youth, Louisiana	November 5, 1998	January 17, 2003
		2 County Jails, Arizona	December 22, 1998	December 22, 1998
		1 Prison, 4 Jails, and 1 Juvenile Justice Facility Northern Mariana Islands	February 23, 1999	February 23, 1999
		6 Facilities in Puerto Rico	April 21, 1999	April 21, 1999
		Central State Hospital, Virginia	May 6, 1999	May 6, 1999
		New Mexico School for the Visually Handicapped	May 28, 1999	May 28, 1999
		Muscogee County Jail, Georgia	September 23, 1999	September 23, 1999
2000	3	5 Maricopa County Jails, Arizona	December 7, 1999	December 7, 1999
		Morgan County Jail, Tennessee	February 10, 2000	February 10, 2000
		Jena Juvenile Justice Facility, Louisiana	March 30, 2000	April 13, 2000
2001	2	Ft. Wayne Developmental Center	December 29, 2000	January 23, 2001
		McCracken County/Regional Jail	January 19, 2001	March 15, 2001
2002	3	Wyoming State Penitentiary	April 15, 2002	April 15, 2002
		Nassau County Correctional Center, New York	April 22, 2002	April 22, 2002
		Shelby County Jail	August 12, 2002	August 12, 2002
2003	1	Alexander Youth Services Center, Arkansas	March 10, 2003	March 10, 2003



## Appendix III. Department of Justice Staffing and Budget Allocations for CRIPA (1995–2003)

The chart below begins with fiscal year 2000 because that is the first year for which Department of Justice (DOJ) data provided information on the number of full-time attorneys available for CRIPA work. According to a Department spokesperson, the Department does not track the number of dollars dedicated to CRIPA enforcement. Figures are estimates based on the judgment of Section managers. Where there were no data, an “X” is used in the empty field.

**Chart A. DOJ Staffing and Budget Allocations for CRIPA (1995–2003)**

Fiscal Year/Date	Special Litigation Section Attorney Positions	Full-Time Attorneys for CRIPA	Half-Time Attorneys for CRIPA (at least 50 percent of their work)	Special Litigation Section Budget Allocations	Special Litigation Section Budget Allocation for CRIPA Activities	Time on CRIPA Cases
FY00	36	15	X	\$6 million	X	X
FY01	42	14	7	\$7.5 million	About half the budget	56.19 percent
FY02	48	15	11	\$8.9 million	Greater than half the budget	58.89 percent
FY03	55	20	18	\$9.7 million	Greater than half the budget	66.91 percent



## **Appendix IV. Mission of the National Council on Disability**

### **Overview and Purpose**

The National Council on Disability (NCD) is an independent federal agency with 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The purpose of NCD is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities regardless of the nature or significance of the disability and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

### **Specific Duties**

The current statutory mandate of NCD includes the following:

- Reviewing and evaluating, on a continuing basis, policies, programs, practices, and procedures concerning individuals with disabilities conducted or assisted by federal departments and agencies, including programs established or assisted under the Rehabilitation Act of 1973, as amended, or under the Developmental Disabilities Assistance and Bill of Rights Act, as well as all statutes and regulations pertaining to federal programs that assist such individuals with disabilities, to assess the effectiveness of such policies, programs, practices, procedures, statutes, and regulations in meeting the needs of individuals with disabilities.
- Reviewing and evaluating, on a continuing basis, new and emerging disability policy issues affecting individuals with disabilities in the Federal Government, at the state and local government levels, and in the private sector, including the need for and coordination of adult services, access to personal assistance services, school reform efforts and the impact of such efforts on individuals with disabilities, access to health care, and policies that act as disincentives for individuals to seek and retain employment.
- Making recommendations to the President, Congress, the Secretary of Education, the director of the National Institute on Disability and Rehabilitation Research, and other officials of federal agencies about ways to better promote equal opportunity, economic self-sufficiency, independent living, and inclusion and integration into all aspects of society for Americans with disabilities.
- Providing Congress, on a continuing basis, with advice, recommendations, legislative proposals, and any additional information that NCD or Congress deems appropriate.
- Gathering information about the implementation, effectiveness, and impact of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12101 et seq.).
- Advising the President, Congress, the commissioner of the Rehabilitation Services Administration, the assistant secretary for Special Education and Rehabilitative Services within the Department of Education, and the director of the National Institute on Disability and Rehabilitation Research on the development of the programs to be carried out under the Rehabilitation Act of 1973, as amended.

- Providing advice to the commissioner of the Rehabilitation Services Administration with respect to the policies and conduct of the administration.
- Making recommendations to the director of the National Institute on Disability and Rehabilitation Research on ways to improve research, service, administration, and the collection, dissemination, and implementation of research findings affecting people with disabilities.
- Providing advice regarding priorities for the activities of the Interagency Disability Coordinating Council and reviewing the recommendations of this council for legislative and administrative changes to ensure that such recommendations are consistent with NCD's purpose of promoting the full integration, independence, and productivity of individuals with disabilities.
- Preparing and submitting to the President and Congress an annual report titled *National Disability Policy: A Progress Report*.

## **International**

In 1995, NCD was designated by the Department of State to be the U.S. government's official contact point for disability issues. Specifically, NCD interacts with the special rapporteur of the United Nations Commission for Social Development on disability matters.

## **Consumers Served and Current Activities**

Although many government agencies deal with issues and programs affecting people with disabilities, NCD is the only federal agency charged with addressing, analyzing, and making recommendations on issues of public policy that affect people with disabilities regardless of age, disability type, perceived employment potential, economic need, specific functional ability, veteran status, or other individual circumstance. NCD recognizes its unique opportunity to facilitate independent living, community integration, and employment opportunities for people with disabilities by ensuring an informed and coordinated approach to addressing the concerns of people with disabilities and eliminating barriers to their active participation in community and family life.

NCD plays a major role in developing disability policy in America. In fact, NCD originally proposed what eventually became the ADA. NCD's present list of key issues includes improving personal assistance services, promoting health care reform, including students with disabilities in high-quality programs in typical neighborhood schools, promoting equal employment and community housing opportunities, monitoring the implementation of the ADA, improving assistive technology, and ensuring that people with disabilities who are members of diverse cultures fully participate in society.

## **Statutory History**

NCD was established in 1978 as an advisory board within the Department of Education (P.L. 95-602). The Rehabilitation Act Amendments of 1984 (P.L. 98-221) transformed NCD into an independent agency.

## Endnotes

<sup>1</sup> Senate Judiciary No. 96-415, 96<sup>th</sup> Congressional Session, p. 1, and House Conference Report No. 96-987, p. 8.

<sup>2</sup> 42 U.S.C. 1997.

<sup>3</sup> Testimony of Leslie G. Aronovitz before the Senate Special Committee on Aging, March 4, 2002. Aronovitz is the director of Health Care–Program Administration and Integrity Issues, Government Accounting Office.

<sup>4</sup> California Protection and Advocacy, Inc., State Council on Developmental Disabilities, USC University Affiliated Program, The Tarjan Center for Developmental Disabilities, UCLA, “Abuse and Neglect of Adults with Developmental Disabilities: A Public Health Priority for the State of California,” August 2003. The report is available at [www.pai-ca.org/pubs/701901.pdf](http://www.pai-ca.org/pubs/701901.pdf).

<sup>5</sup> Jeffrey Meitrodt and Steve Ritea, “State of Neglect,” *Times-Picayune*, April 17, 2005.

<sup>6</sup> Health and Human Services Office of Inspector General, “Reporting Abuses of Persons with Disabilities,” May 2001.

<sup>7</sup> The Department of Justice began enforcing the rights of people in institutions in 1971, when it accepted an invitation from U.S. District Court judge Frank M. Johnson, Jr., to join the landmark case *Wyatt v. Stickney* (325 F. Supp. 781 (M.D. Ala. 1971) as litigating amicus curiae.

<sup>8</sup> See *United States v. Solomon*, 419 F. Supp. 358 (D. Md. 1976), *aff’d*, 563 F.2d 1121 (4<sup>th</sup> Circuit 1977) and *United States v. Mattson*, C.A. No. 74-138-BU (D. Mont. Sept. 29, 1976), *aff’d*, 600 F. 2d 1295 (9<sup>th</sup> Circuit. 1979).

<sup>9</sup> Judiciary Committee Report to Accompany S. 10, Senate Report No. 96-415, 96<sup>th</sup> Congressional Session, p. 27.

<sup>10</sup> *Ibid.*

<sup>11</sup> Public Law No. 101-336.

<sup>12</sup> Public Law No. 104-134, Stat. 1321 §§ 801-810 (April 24, 1996), amended, Public Law No. 105-119, 111 Stat. 240 (November 26, 1997).

<sup>13</sup> 527 U.S. 581 (1999).

<sup>14</sup> 29 U.S.C. 794.

<sup>15</sup> 42 U.S.C. 1997a.

<sup>16</sup> See [www.usdoj.gov/crt/split/complaints.htm#Institution](http://www.usdoj.gov/crt/split/complaints.htm#Institution).

<sup>17</sup> “Delivering on the Promise: U.S. Department of Justice Self-Evaluation to Promote Community Living for People with Disabilities,” p. 38, available at [www.hhs.gov/newfreedom/final/pdf/doj.pdf](http://www.hhs.gov/newfreedom/final/pdf/doj.pdf).

<sup>18</sup> Section 504 of the Rehabilitation Act of 1973 as amended authorizes federal agencies to withhold federal funds from recipients that violate the rights of people with disabilities.

<sup>19</sup> 42 U.S.C. 1997b (a) (2).

<sup>20</sup> See 42 U.S.C. 1997b (a) (1).

<sup>21</sup> Ibid.

<sup>22</sup> “Staff Report on the Institutionalized Mentally Disabled,” prepared for Joint Hearings conducted by the Subcommittee on the Handicapped, Committee on Labor and Human Resources and the Subcommittee on Labor, Health and Human Services, Education and Related Agencies, Committee on Appropriations, April 1–3, 1985, p. 135.

<sup>23</sup> 42 U.S.C. 1997b (a) (2) (B).

<sup>24</sup> 42 U.S.C. 1997b (1) (2) (A).

<sup>25</sup> “Delivering on the Promise.”

<sup>26</sup> Ibid.

<sup>27</sup> “Staff Report on the Institutionalized Mentally Disabled,” p. 146.

<sup>28</sup> Ibid., p. 147.

<sup>29</sup> The Web site for the Youth Law Center is [www.ylc.org](http://www.ylc.org).

<sup>30</sup> The Web site for the ACLU’s National Prison Project is [www.aclu.org/Prisons/PrisonsMain.cfm](http://www.aclu.org/Prisons/PrisonsMain.cfm).

<sup>31</sup> The Special Litigation Section portion of the DOJ Web site is available at [www.usdoj.gov/crt/split](http://www.usdoj.gov/crt/split). Information about CRIPA enforcement is available at [www.usdoj.gov/crt/split/cripa.htm](http://www.usdoj.gov/crt/split/cripa.htm).

<sup>32</sup> See [www.usdoj.gov/crt/split/faq.htm#emergency](http://www.usdoj.gov/crt/split/faq.htm#emergency).

<sup>33</sup> National Association of Protection and Advocacy Systems, Inc. ([www.napas.org](http://www.napas.org)).

<sup>34</sup> Department of Justice Activities Under the Civil Rights of Institutionalized Persons Act, Fiscal Year 2003, pp. 1–2, available at [www.usdoj.gov/crt/split/documents/split\\_cripa03.pdf](http://www.usdoj.gov/crt/split/documents/split_cripa03.pdf).

<sup>35</sup> 42 U.S.C. 1997f.